

STATE OF VERMONT
HUMAN SERVICES BOARD

| | | |
|-----------|---|-------------------------|
| In re |) | Fair Hearing No. 15,987 |
| |) | |
| Appeal of |) | |
| |) | |

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare placing sanctions on her ANFC grant. The issue is whether the petitioner failed to comply with Reach Up requirements.

FINDINGS OF FACT

1. The petitioner was the subject of Fair Hearing Nos. 15,426 and 15,455 decided by the Board on April 7, 1999. That decision is incorporated by reference herein.

2. Following the Board's decision in Fair Hearing Nos. 15,426 and 15,455, the Department sent the petitioner a letter dated April 27, 1999, setting up a meeting with her Reach Up worker on May 7, 1999, regarding a Community Service Placement (CSE).

3. On April 29, 1999, the petitioner sent her Reach Up worker a letter asking for more specific information about the placement and childcare in advance of the May 7 meeting.

4. On April 30, 1999, the petitioner's Reach Up worker sent the petitioner a written reply describing the duties of the position (mostly clerical), referring the petitioner to a list of camps for day care for her children, and explaining that the petitioner's older child would not qualify for day care unless she had a "documented disability" in the form of an IEP or a statement from her doctor that she was unable to care for herself.

5. On May 6, the petitioner sent her Reach Up worker a letter stating that she did not have enough information about child care and transportation to be "ready to discuss with you the possible CSE position" on May 7. The petitioner did not make any further contact with her worker to determine the content and status of the May 7 meeting.

6. When the petitioner did not appear at the May 7 meeting or call to explain her absence, the Reach Up worker sent the petitioner a letter (dated that same day) scheduling a conciliation meeting on May 14, 1999. The notice explained that the purpose of the meeting was to allow the petitioner "to fully explain your side of the issue", and it included a warning that her failure to appear would result in the imposition of sanctions to her ANFC grant.

7. On May 12, 1999, the petitioner sent Reach Up a letter saying that she still hadn't received information from Reach Up regarding the location and hours of the placement and that without this information discussion about the CSE placement would be "premature". Again, the petitioner did not attempt to reschedule the meeting or to ascertain further the nature of the meeting.

8. When the petitioner did not attend the May 14 meeting or call Reach Up that day, Reach Up notified the petitioner's ANFC worker that she should be sanctioned for non-cooperation with Reach Up. The Department then notified the petitioner that her ANFC grant would be subject to sanctions effective June 1, 1999, including her grant being paid by vendors and the petitioner being required to attend 3 Reach Up meetings a month. The petitioner appealed this decision to the Board.

9. Following a continuance (granted to the petitioner even though it had been requested only one day before her scheduled hearing on June 14, 1999) a hearing was held on July 14, 1999. At the hearing the Department explained that the CSE placement for the petitioner had been at the Red Cross, and that the purpose of the Reach Up meetings had been to discuss the petitioner's concerns face-to-face and avoid an exchange of letters.

10. At the hearing the Department also explained that under the regulations ANFC sanctions for non-cooperation can be purged by the recipient cooperating with Reach Up and working at an unsubsidized job or a CSE for at least 20 hours a week for two weeks. Based on the petitioner's representation that she would do this, the hearing was continued for another month in the hope and expectation that the petitioner would purge her sanction (which had not actually taken effect pending the outcome of the petitioner's appeal) and render the case moot before the next scheduled meeting of the Board. The hearing officer warned the petitioner at that time that if she did not cooperate fully with Reach Up he would recommend to the Board that the Department's decision imposing sanctions be affirmed because of her not attending scheduled Reach Up meetings. The hearing officer advised the petitioner that she was not in a position to impose preconditions on Reach Up concerning these meetings and any CSE placement and then use Reach Up's failure to meet these preconditions as an excuse not to attend meetings or otherwise cooperate with Reach Up.

11. The hearing reconvened on August 11, 1999. The petitioner's Reach Up worker testified that the petitioner had attended meetings on July 23 and 26, but that a disagreement had arisen at the meeting regarding the petitioner signing a

conciliation agreement drafted by the Reach Up worker. Based on the petitioner's refusal to sign this agreement, the worker had notified DSW to impose sanctions on the petitioner's ANFC grant.

12. However, prior to the imposition of the sanctions and the scheduled date for the hearing, Reach Up had assigned the petitioner's case to another agency (Refugee Resettlement Program) that is authorized to oversee some CSE placements. This agency had located another CSE placement for the petitioner at the Department of Health, and it reported at the hearing that this placement was proceeding smoothly with the petitioner's cooperation. Based on these representations, the parties agreed to another continuance of a month to allow the petitioner time to participate in this CSE placement and, hopefully, purge her pending ANFC sanctions.

13. At a scheduled hearing on September 8, 1999, the parties represented that there had been a delay beyond anyone's control in the petitioner starting her CSE job at the Department of Health, but that the job was scheduled to begin on September 20, and that the petitioner had continued to be cooperative. Based on these representations the parties again agreed to continue the matter for another month.

14. Throughout the continuances in this matter, the Department has held the petitioner's ANFC sanctions (which were

to become effective June 1, 1999) in abeyance pending her cooperation in obtaining and maintaining a suitable CSE.

15. A hearing was convened on October 6, 1999. The petitioner's worker from the Refugee Resettlement program represented that the CSE at the Health Department had been cancelled on September 20, 1999, because the petitioner had refused that day to sign a W-4 form and an I-9 Citizenship Verification form before she could begin working. The Department represented that it had repeatedly explained to the petitioner that the CSE program required her to sign these forms before she could begin working at her CSE.

16. The Department represented that the petitioner had told her worker that she was upset that the Department of Health had not offered her a regular position that had opened up while her CSE was pending. The worker had advised the petitioner to consult with her attorney if she had any questions about the forms, but that even after having done so the petitioner had still refused to sign them.

17. At the hearing the petitioner did not contest any of the above facts. She stated that she was now ready to sign the forms, but the Department was doubtful that the Department of health still had that CSE opening. The petitioner reiterated her displeasure that she had not been hired by the Department of

Health for a permanent job that had opened up that she thought was similar to the CSE, but did not offer any legal argument or other defense for her actions. The Department represented that the paying job at the Department of Health was not the same as the petitioner's CSE, and that the Department of Health had intended to use the CSE to train the petitioner for a job with more responsibility. The petitioner offered no evidence to refute this representation.

18. Although the petitioner must still cooperate with Reach Up, and is still free to attempt to purge the sanction by working at a paying job or another CSE for two weeks, the Department has indicated that in light of the above it no longer agrees to continue the matter without imposing the sanctions on the petitioner's ANFC grant.

ORDER

The Department's decision is affirmed.

REASONS

As a result of the Board's decision in Fair Hearing Nos. 15,426 and 15,455 the petitioner was required to cooperate with Reach Up in the development of a CSE placement. As noted above, after this decision, the petitioner failed to appear at the

first meeting with Reach Up scheduled for this purpose on May 7, 1999.

W.A.M. § 2349.4 provides, in part, that "de facto refusal to participate" in Reach Up includes the "failure without good cause . . . to show up for a program interview or appointment". As noted above, Reach Up's failure to submit in advance to preconditions to the meeting unilaterally set by the petitioner cannot be considered good cause for her having failed to attend the meeting—especially when the purpose of the meeting was to address the same concerns the petitioner was demanding be resolved in advance. See W.A.M. § 2349.2.

Section 2394 of the Reach Up regulations goes on to include the provision: "If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins." As found above, the Department scheduled a conciliation meeting with the petitioner for May 14, 1999, which the petitioner also failed to attend—again because the Department had allegedly not responded to unilateral preconditions to the meeting imposed by the petitioner.

W.A.M. § 2350.3 provides, in part: "The conciliation process shall be determined unsuccessful when the individual: . . . b) exhibits a pattern of behavior demonstrated by a series of actions from which a refusal to participate can be reasonably

inferred." As found above, the petitioner, again on the eve of the meeting, unilaterally demanded in writing that her Reach Up worker provide her with information, and then failed to appear when this information was not provided in advance to her satisfaction. In view of the fact that the petitioner was clearly notified that the purpose of the conciliation meeting was to discuss the petitioner's concerns, it must be concluded that the petitioner's failure to attend the meeting without attempting to reschedule it demonstrated her refusal to reasonably cooperate with Reach Up's attempts to develop a CSE for her. W.A.M. § 2350.3 further provides: "When conciliation is unsuccessful, the Reach Up case manager begins the actions necessary to apply the appropriate sanctions."

W.A.M. § 2351.2(5) provides that sanctions do not take effect pending an individual's appeal to the Human Services Board. As noted above, following having been orally informed by the hearing officer after her hearing on July 14, 1999, that in light of the above facts he felt the Department had established that she had refused to cooperate, the petitioner was given the opportunity to avoid the imposition of the sanction by purging it before it went into effect. The matter was continued for several months to allow the petitioner to cooperate with Reach Up in the development of a CSE and to participate in that CSE

for two weeks. See W.A.M. § 2351.2(4). To the petitioner's credit, it appears she cooperated in allowing the Refugee Resettlement counselor to find and develop an appropriate CSE placement for her. Unfortunately, as noted above, at the last minute the petitioner's unreasonable and unilateral actions have prevented her from being placed in that CSE long enough to avoid the imposition of sanctions to her ANFC grant.

The Reach Up regulations regarding the CSE placement process require individuals to: "Cooperate in all aspects of the placement process . . ." W.A.M. §§ 2346.93(B)(1). This includes the efforts of their case manager to "complete the worksite agreement specific to the parent's worksite placement". W.A.M. §§ 2346.93(A)(7). In this case, as found above, the petitioner refused, without any reasonable justification, to sign the tax and immigration forms necessary for her placement at the Health Department. This prevented her worker from completing her worksite agreement and led to her losing this CSE.

Even if it could be concluded that the petitioner's failure to attend her conciliation meeting in May did not amount to a refusal to comply with the job search requirements of Reach Up, she still had to subsequently cooperate with Reach Up in the development of a CSE. Unfortunately, the petitioner has now

also refused to accept an available CSE. On either basis, it must, therefore, be concluded that the petitioner is subject to the sanctions set forth in the regulations.¹ See W.A.M. §§ 2351.2(1)(a)&(b).

#

¹ Under the regulations the petitioner can still purge the sanction either by working at an unsubsidized job for two weeks or by participating in Reach Up for a two-month job search and accepting a CSE for two weeks after that. See W.A.M. § 2351.2(4).